



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52**

[EPA-R06-OAR-2006-0593; FRL- 9903-00-Region 6]

**Approval and Promulgation of Implementation Plans;**

**Texas; Control of Air Pollution by Permits for New Construction or Modification; Permits  
for Specific Designated Facilities**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking a direct final action to approve portions of two revisions to the Texas State Implementation Plan (SIP) concerning the Permits for Specific Designated Facilities Program, also referred to as the FutureGen Program. EPA has determined that the portions of these SIP revisions specific to the FutureGen Program submitted on March 9, 2006 and July 2, 2010, comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 and parts C and D of the Act.

**DATES:** This direct final rule is effective on **[Insert date 60 days from date of publication in the Federal Register]** without further notice, unless EPA receives relevant adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2006-0593, by one of the following methods:

- (1) [www.regulations.gov](http://www.regulations.gov) : Follow the on-line instructions for submitting comments.
- (2) E-mail: Ms. Adina Wiley at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).
- (3) Mail or Delivery: Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2006-0593.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning today's direct final action, please contact Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, Texas 75202-2733, telephone (214) 665-2115; fax number (214) 665-6762; email address [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

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### I. What Action is EPA Taking?

EPA is taking a direct final action to approve portions of two revisions to the Texas State Implementation Plan (SIP) concerning the Permits for Specific Designated Facilities Program, also referred to as the FutureGen Program. EPA has determined that the portions of these SIP revisions specific to the FutureGen Program submitted on March 9, 2006 and July 2, 2010, comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 and parts C and D of the Act.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. As explained in this action and our accompanying technical support documents (TSD), we are finding this action noncontroversial because the FutureGen permitting and public notice provisions can no longer be used in Texas, but we are proceeding with a final action to fulfill our statutory obligations under the CAA. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[insert date 60 days from date of publication in the Federal Register]** without further notice unless we receive

relevant adverse comment by **[insert date 30 days from date of publication in the Federal Register]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## **II. What did Texas Submit?**

FutureGen is a United States Department of Energy (DOE) program designed to promote the advancement and development of new technologies. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the DOE.

The 79<sup>th</sup> Texas Legislature passed House Bill 2201 (HB 2201) in 2005, and concluded that the FutureGen technology demonstration project could result in major economic, social and environmental benefits for Texas. In order to help Texas compete for federal funding associated with the FutureGen Project, the Texas Legislature passed HB 2201 to provide for streamlined permitting by specifically exempting FutureGen projects from the contested case hearing process.

March 9, 2006 SIP Submittal

Pursuant to the directive of Texas HB 2201, on February 22, 2006, the TCEQ adopted the new provisions to Chapter 116 to establish streamlined permitting procedures and rules for the FutureGen Project. At the same time, the TCEQ also adopted public participation provisions for the FutureGen Project to provide for the exemption from contested case hearing. These new provisions were submitted to EPA as a SIP revision on March 9, 2006 by the Chairman of the TCEQ, Ms. Kathleen Hartnett White, as Rule Project No. 2005-053-091-PR.

#### July 2, 2010 SIP Submittal

The TCEQ subsequently adopted revisions to the public notice provisions for the entirety of the Texas Air Permit program on June 2, 2010. The Chairman of the TCEQ, Mr. Bryan W. Shaw, Ph.D., submitted these revised public participation rules as a revision to the Texas SIP on July 2, 2010 as part of Rule Project No. 2010-004-039-LS. On this date, the TCEQ also withdrew the previous public notice SIP submittals, including the FutureGen specific public notice provisions submitted on March 9, 2006. Therefore, the public notice provisions specific to the FutureGen Program that remain before EPA for action were submitted on July 2, 2010.

The July 2, 2010 SIP submittal established the public participation provisions for the majority of the Texas air permitting programs, including applications for the FutureGen Program. On December 13, 2012, EPA proposed approval of most of the public participation rules submitted on July 2, 2010. See 77 FR 74129. However, in that proposed approval we severed and took no action on the portions of the public notice provisions establishing applicability and response to comment provisions specific to FutureGen Program applications at 30 TAC 39.402(a)(10), 39.419(e)(3) and 39.420(h). We deferred action on these provisions until such time as we evaluated the underlying permit provisions for the FutureGen Program at 30 TAC Chapter 116, Subchapter L. See 77 FR 74129. EPA is addressing the July 2, 2010,

submittal of 30 TAC 39.402(a)(10), 39.419(e)(3) and 39.420(h) through today's direct final action.

### **III. EPA's Evaluation**

We provide our evaluation for this rulemaking in this section. Additional information to support our evaluation is available in the TSDs for this rulemaking, which are available in the rulemaking docket.

Our evaluation shows that a FutureGen Project could be a PSD, NNSR or minor NSR source; therefore, we reviewed the program against the federal permitting and public notice requirements and the existing SIP-approved provisions in Texas. The FutureGen permitting provisions require an applicant to demonstrate compliance with all requirements for PSD and NNSR permitting; which would require the FutureGen applicant to also comply with the public notice rules applicable to PSD and NNSR permitting.<sup>1</sup> Additionally, the FutureGen permitting provisions require an applicant to demonstrate protection of public health and welfare by complying with the Texas Health and Safety Code and all applicable rules and regulations of the TCEQ. Accordingly, we find that the FutureGen Program permitting and public notice rules as submitted March 9, 2006 and July 2, 2010 are consistent with the requirements of the CAA and EPA's regulations, and protect the integrity of the Texas SIP.

Since the adoption of Texas HB 2201 and the adoption and submittal of the associated Texas SIP provisions, the FutureGen Project has been awarded to the State of Illinois. Additionally, the DOE decided to stop funding the FutureGen Project in 2008. On August 5, 2010, the DOE introduced FutureGen 2.0; a reinvention of the original FutureGen Project

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<sup>1</sup> EPA proposed approval of revised public notice rules for Texas air permitting on December 13, 2012. See 77 FR 74129.

concept still planned for Illinois. Therefore, the submitted rules establishing the permitting and public notice rules for the FutureGen Project likely will not be used in Texas because the underlying FutureGen Project is not in existence in Texas.

EPA, however, has a statutory obligation to review and act upon SIP submittals pursuant to CAA 110(k). Because the State of Texas submitted the regulatory provisions for the FutureGen Project for approval into the Texas SIP, and has not subsequently requested to withdraw the program from our consideration, we are required to take action even though the program is superfluous to the SIP. Our authority under CAA 110(k)(4) does not provide us the ability to disapprove a program solely because it is no longer needed. Neither can we take steps to return the superfluous provisions to the state absent a direct request. Therefore, EPA must proceed with this proposed action to satisfy our obligations under the CAA.

#### **IV. Final Action**

Under section 110 and parts C and D of the Act, and for the reasons stated above, EPA is taking direct final action to approve revisions to the Texas SIP submitted on March 9, 2006 and July 2, 2010 for the Permits for Specific Designated Facilities Program, or the FutureGen Project, as consistent with the CAA and EPA's policy and guidance. Specifically, EPA is approving the following new provisions establishing the FutureGen permitting requirements as submitted on March 9, 2006: 30 TAC 116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426 and 116.1428. EPA is approving the new provisions establishing the FutureGen-specific public notice provisions at 30 TAC 39.402(a)(10), 39.419(e)(3) and 39.420(h) as submitted on July 2, 2010.



## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action

for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 1, 2013.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

**PART 52 - [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

2. In section 52.2270(c) the table titled “EPA Approved Regulations in the Texas SIP” is amended as follows:

- a. Immediately following the entry for Section 19.14, by adding a new centered heading "Chapter 39 – Public Notice" followed by a new centered heading "Subchapter H – Applicability and General Provisions" followed by new entries for Sections 39.402, 39.419, and 39.420; and
- b. Under Chapter 116 (Reg 6) – Control of Air Pollution by Permits for New Construction or Modification, immediately following the entry for Section 116.931, by adding a new centered heading for "Subchapter L – Permits for Specific Designated Facilities" followed by new entries for Sections 116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426 and 116.1428.

The additions read as follows:

**§ 52.2270 Identification of plan.**

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(c) \* \* \*

### EPA Approved Regulations in the Texas SIP

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
Chapter 39 – Public Notice				
Subchapter H – Applicability and General Provisions				
Section 39.402	Applicability to Air Quality Permits and Permit Amendments	6/2/2010	[Insert date of FR publication] [Insert FR page number where document begins]	SIP only includes 39.402(a)(10).
Section 39.419	Notice of Application and Preliminary Determination	6/2/2010	[Insert date of FR publication] [Insert FR page number where document begins]	SIP only includes 39.419(e)(3).
Section 39.420	Transmittal of the Executive Director's Response to Comments and Decision	6/2/2010	[Insert date of FR publication] [Insert FR page number where document begins]	SIP only includes 39.420(h).
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Chapter 116 (Reg 6) – Control of Air Pollution by Permits for New Construction or Modification				
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Subchapter L – Permits for Specific Designated Facilities				
Section 116.1400	Purpose	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.1402	Applicability	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.1404	Permit Required	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	

Section 116.1406	Compliance History	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.1408	Definitions	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.1410	Emissions Profile for FutureGen Projects	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.1414	Applications for Facilities that are Components of a Designated Project	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.1416	Public Notice	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.1418	Public Participation	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.1420	Permit Fee	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.1422	General and Special Conditions	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.1424	Amendments and Alterations of Permits Issued Under This Subchapter	2/22/2006	[Insert date of FR publication] [Insert FR page number where document begins]	

Section 116.1426	Renewal of Permits Issued Under This Subchapter	2/22/2006	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	
Section 116.1428	Delegation	2/22/2006	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	
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[FR Doc. 2013-27991 Filed 11/20/2013 at 8:45 am; Publication Date: 11/21/2013]